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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,333	07/22/2003	Cory Bear	2103175-991101	7760
26379	7590	03/25/2008		
DLA PIPER US LLP 2000 UNIVERSITY AVENUE E. PALO ALTO, CA 94303-2248			EXAMINER CORRIELUS, JEAN M	
			ART UNIT	PAPER NUMBER
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			MAIL DATE	DELIVERY MODE
			03/25/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/625,333	Applicant(s) BEAR ET AL.	
	Examiner Jean M. Corrielus	Art Unit 2162	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 February 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 4-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This office action is in response to the amendment filed on February 26, 2008, in which claims 4-6 are added.

Response to Arguments

2. Applicant's arguments with respect to claims 4-6 have been considered but are moot in view of the new ground(s) of rejection necessitated by amendment.

Remark

3. The remark filed on February 06, 2008, the Applicant asserted that the objection and the double patenting rejection set forth in the last office action is moot in view of the new claims. The examiner considers this statement as an acknowledgement that claims 1-3 are canceled in lieu of new added claims 4-6.

Double Patenting

4. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

5. Claims 4-6 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 3, 24 and 44 of prior U.S. Patent No. 6,640,217. This is a double patenting rejection.

<i>Application</i>	<i>Patent</i>
4. An automatic refresh request generation system for a data backup system, the system comprising: a computer network with data backup activity performed by a plurality of data backup products wherein each data backup product generates records relating to the data backup activity; a host computer connected to the computer network that executes a canonical backup device; and the canonical backup device further comprising a backup engine plug-in that will obtain records of data backup activity from each data backup product and a refresh request unit that operates in the background of the host computer, the refresh request unit further comprising a timer that determines if the hour of the current day has changed, means for checking an automatic request determiner to determine if a refresh request for the particular server is automatically initiated and means for initiating a refresh request if the refresh request has been initiated.	3. An automatic refresh request generation system for a data backup system, the system comprising: a computer network with data backup activity performed by a plurality of data backup products wherein each data backup product generates records relating to the data backup activity; a host computer connected to the computer network that executes a canonical backup device; and the canonical backup device further comprising a backup engine plug-in that will obtain records of data backup activity from each data backup product and a refresh request unit that operates in the background of the host computer, the refresh request unit further comprising a timer that determines if the hour of the current day has changed, means for checking an automatic request determiner to determine if a refresh request for the particular server is automatically initiated and means for initiating a refresh request if the refresh request has been initiated.

Table I

<i>Application</i>	<i>Patent</i>
5. A system for inserting records from one or more data backup products into a canonical database, comprising: a computer network with data backup activity performed by a plurality of data backup products wherein each data backup product generates records relating to the data backup activity; a host computer connected to the computer network that executes a canonical backup device; and the canonical backup device further comprising a backup engine plug-in that will obtain records of data backup activity from each data backup product and a database insertion unit that inserts the data from each record of a data backup product into a canonical database, the database insertion unit further comprising means for inserting data from the record into a data backup portion, means for inserting data from the record into a backup client	24. A system for inserting records from one or more data backup products into a canonical database, comprising: a computer network with data backup activity performed by a plurality of data backup products wherein each data backup product generates records relating to the data backup activity; a host computer connected to the computer network that executes a canonical backup device; and the canonical backup device further comprising a backup engine plug-in that will obtain records of data backup activity from each data backup product and a database insertion unit that inserts the data from each record of a data backup product into a canonical database, the database insertion unit further comprising means for inserting data from the record into a data backup portion, means for inserting data from the record into a backup client

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portion, means for inserting data from the record into a backup target portion, means for inserting data from the record into a backup device name portion and means for inserting data from the record into a backup level portion.	portion, means for inserting data from the record into a backup target portion, means for inserting data from the record into a backup device name portion and means for inserting data from the record into a backup level portion.
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Table 2

<i>Application</i>	<i>Patent</i>
6. A method for inserting records from one or more data backup products into a canonical database, each data backup product connected to a computer network and each data backup product generating records relating to the data backup activity for the data backup product, the method comprising: obtaining records of data backup activity from each data backup product; and inserting the data from each record of a data backup product into a canonical database, the database insertion further comprising inserting data from the record into a data backup portion, inserting data from the record into a backup client portion, inserting data from the record into a backup target portion, inserting data from the record into a backup device name portion and inserting data from the record into a backup level portion.	44. A method for inserting records from one or more data backup products into a canonical database, each data backup product connected to a computer network and each data backup product generating records relating to the data backup activity for the data backup product, the method comprising: obtaining records of data backup activity from each data backup product; and inserting the data from each record of a data backup product into a canonical database, the database insertion further comprising inserting data from the record into a data backup portion, inserting data from the record into a backup client portion, inserting data from the record into a backup target portion, inserting data from the record into a backup device name portion and inserting data from the record into a backup level portion.

Table 3

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jean M. Corrielus whose telephone number is (571) 272-4032. The examiner can normally be reached on 10 hours shift.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Breene can be reached on (571) 272-4107. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jean M Corrielus/
Primary Examiner
Art Unit 2162

March 27, 2008